What Appraisers Wish Lawyers Knew About Appraising

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1. Appraiser Standards

2. Appraiser Procedures

3. Appraiser Roles

Part 1

APPRAISER STANDARDS

Part 1

Uniform Standards of Professional Appraisal Practice (USPAP)

Has the Force of Law in Idaho

First Drafted in 1986

The Appraisal Foundation – Formed in 1987

Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) – Passed in 1989

Part 1

Licensing Required by FIRREA

Three Levels of License / Certification

- Licensed Residential Appraiser – “non-complex” residential property
- Certified Residential Appraiser – “complex residential”
- Certified General Appraiser – All real property types

Part 1

Licensing/Certification Requirements

Registered Trainee Status

Education - Minimum Hours of Course Work

Experience - Minimum Hours of Appraisal Work

Approval of “Work Samples”

Passing Comprehensive Exam

College Associates or Bachelors Degree for Certified Levels

Part 1

COURT CASES USING USPAP - 1

Deep Water Brewing v Fairway Resources Limited

MAJOR ISSUE: Damages due to restaurant view diminished by downhill development

USPAP RELEVANCE: Expert witness testimony and report was allowed to stand and not be excluded because it was measured against USPAP and was found in complete compliance.

CONCLUSION: USPAP is an established standard and accepted expert's testimony due to USPAP compliance

Part 1

COURT CASES USING USPAP 2

Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation

MAJOR ISSUE: Contamination of 50 local wells with methyl tertiary butyl ether ("MTBE").
What is the value diminution caused by the contamination?

USPAP RELEVANCE: USPAP was considered by the court to be the appropriate legal standard to measure whether an appraisal fell within the requirements of **Rule 702**. The court made special reference to **USPAP** **Advisory Opinion 9** which deals specifically with appraising real property impacted by environmental contamination.

CONCLUSION: Noncompliance with USPAP resulted in exclusion of expert's testimony.

Part 1

COURT CASES USING USPAP - 3

Whitehouse Hotel Limited Partnership v IRS

MAJOR ISSUE: IRS disallowed most of “qualified conservation contribution” charitable contribution claimed based on its conveyance of “facade easement,” or conservation restriction,
to nonprofit historical preservation society.
USPAP RELEVANCE: Use of USPAP as the exclusive test to accept or reject a real estate appraisal expert’s testimony.

CONCLUSION: Lack of USPAP compliance affected the “**weight**” given to the expert’s testimony.

Part 1

USPAP - STRUCTURE

RULES

STANDARDS

STATEMENTS

<u>These Portions have the Force of LAW</u>

Part 1

USPAP – STRUCTURE - RULES

1. ETHICS Rule

   Conduct

   Management

   Confidentiality

   Record Keeping

Part 1

USPAP – STRUCTURE - RULES

2. COMPETENCY Rule
3. SCOPE OF WORK Rule
4. JURISDICTIONAL EXCEPTION Rule
   - Requires Law or Regulation
   - Is not "Optional" – mandatory when applicable
   - Must Cite Applicable Law in Report

Part 1

USPAP – STRUCTURE - STANDARDS

SR-1 – Developing an Appraisal

SR-2 – Reporting an Appraisal

SR-3 – Reviewing an Appraisal

SR-4 – Developing a Real Property Consulting Assignment

SR-5 – Reporting a Real Property Consulting Assignment

Part 1

USPAP – STRUCTURE - STANDARDS

SR-6 – Mass Appraisal Developing and Reporting

SR-7 – Personal Property Appraisal Development

SR-8 – Personal Property Appraisal Reporting

SR-9 – Business Appraisal Development

SR-10 – Business Appraisal Reporting

Part 1

USPAP – STRUCTURE - STATEMENTS

Originally 10 Statements

5 Have Been Retired, Leaving 5 Statements

All of USPAP To This Point HAVE THE FORCE OF LAW

Part 1

USPAP - STRUCTURE

Advisory Opinions

Frequently Asked Questions

Certification of Appraiser

Part 1

USPAP - Utility

- USPAP is a “Safe Harbor” for the appraiser
- USPAP is an effective “Weapon” for the lawyer
- USPAP is an acknowledged “Standard” for the court

Part 2

APPRAISER PROCEDURES

Part 2

Appraiser Procedures

Pre-Assignment Interview with Counsel

Scope of Work for Assignment

Report Types

Phasing the Litigation Assignment

Part 2

Pre-Assignment Interview with Counsel

Two-Way Interview Process

Discuss the Litigation Theory of Case

Define the Problem

The Valuation Process

STEP 1 — Identification of the Problem

Identify client and intended users	Identify the intended use	Identify the purpose of the assignment (type of value)	Identify the effective date of the opinion	Identify the relevant characteristics of the property	Assignment conditions	
					Extraordinary assumptions	Hypothetical conditions

STEP 2 — Scope of Work

STEP 3 — Data Collection and Property Description

Market Area Data	Subject Property Data	Comparable Property Data
General characteristics of region, city, and neighborhood	Subject characteristics of land use and improvements, personal property, business assets, etc.	Sales, listings, offerings, vacancies, cost and depreciation, income and expenses, capitalization rates, etc.

STEP 4 — Data Analysis

Market Analysis	Highest and Best Use Analysis
Demand studies Supply studies Marketability studies	Site as though vacant Ideal improvement Property as improved

STEP 5 — Site Value Opinion

STEP 6 — Application of the Approaches to Value

Cost	Sales Comparison	Income Capitalization

STEP 7 — Reconciliation of Value Indications and Final Opinion of Value

STEP 8 — Report of Defined Value

Source: Adapted from *The Appraisal of Real Estate*, 13th ed., p. 131, Fig. 7.1. Chicago: Appraisal Institute, 2008.

Identify the Problem with Appraiser Conference

The Valuation Process

STEP 1	Identification of the Problem					
Identify client and intended users	Identify the intended use	Identify the purpose of the assignment (type of value)	Identify the effective date of the opinion	Identify the relevant characteristics of the property	Assignment conditions	
					Extraordinary assumptions	Hypothetical conditions

STEP 2	Scope of Work

Part 2

Pre-Assignment Interview with Counsel

Discuss Scope of Work

Define Time Schedule

Discuss Relevant Law or Regulations

Determine Jurisdictional Exceptions

Must be based on Law or Regulation

May be based on order by a Judge

Part 2

Scope of Work

USPAP Rule – Appraiser Decision

Replaces the “Departure Rule” of a “Limited Appraisal” – Before 2006 USPAP

Depends on Many Variables

Depends on Intended Use and Users

Identify the Problem with Appraiser Conference

The Valuation Process

STEP 1	Identification of the Problem					
Identify client and intended users	Identify the intended use	Identify the purpose of the assignment (type of value)	Identify the effective date of the opinion	Identify the relevant characteristics of the property	Assignment conditions	
					Extraordinary assumptions	Hypothetical conditions

STEP 2	Scope of Work

STEP 3	Data Collection and Property Description	
Market Area Data General characteristics of region, city, and neighborhood	**Subject Property Data** Subject characteristics of land use and improvements, personal property, business assets, etc.	**Comparable Property Data** Sales, listings, offerings, vacancies, cost and depreciation, income and expenses, capitalization rates, etc.

Part 2

Scope of Work

Typical Example where Scope Varies

1. Buyer wants to know what price to offer
2. Lender wants appraisal for loan underwriting
3. Lawyer wants appraisal for divorce case

Part 2

Types of Appraisal Reports

Three Levels of Reports under USPAP

Restricted Use Report – "**State**"

Summary Report – "**Summarize**"

Self-Contained Report – "**Describe**"

Part 2

Types of Appraisal Reports

Oral Appraisal Reports

Oral delivery of the results of an "Appraisal, Appraisal Review, or Appraisal Consulting Service"

Must comply with USPAP

Deposition and Trial Testimony considered an Oral Report – Must Comply with USPAP

Part 2

Phasing Appraisal Reports

APPRAISERS:

Cannot Accept Contingent Assignments

Cannot Accept Assignments with Predetermined Results

Cannot Advocate for Counsel's Case

Part 2

Phasing Appraisal Reports

Phase I – Preliminary work to determine usefulness

Phase II – Full appraisal and written Report

Saves Client expenses

Saves time for Counsel

Useful in settlement decisions

Part 3

APPRAISER ROLES

Part 3

Appraiser Roles

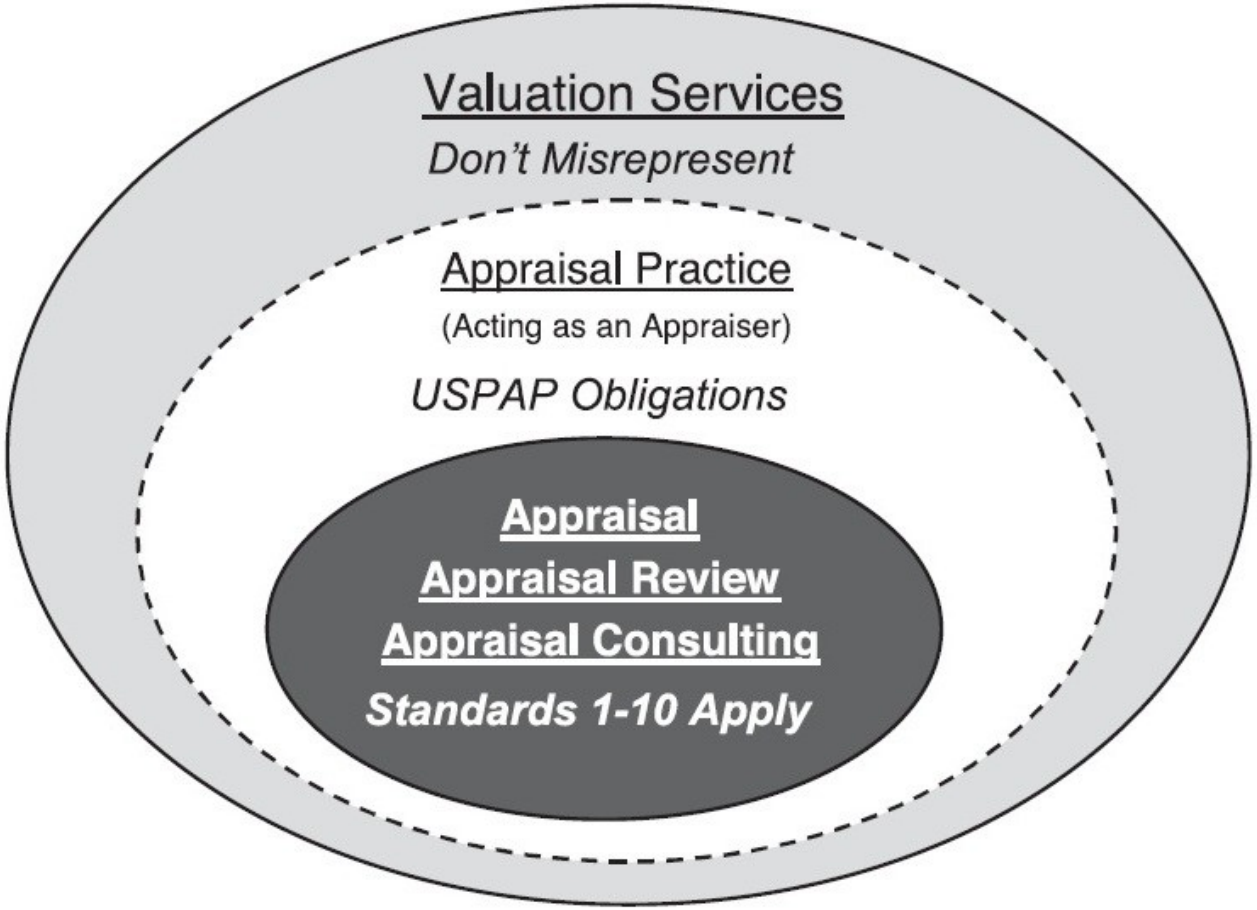
An appraiser can perform various services, some of which

. . . involve direct appraisal activity

. . . involve the appraisal "expertise"

. . . Involve other "aspects of "value"

Levels of Appraisal Practice



Part 3

Appraiser Roles

Some examples of roles an appraiser can fill that are "**Valuation Services**" but not Appraisal Practice

- Real estate broker/agent
- Property manager
- Architect
- Accountant
- Attorney

Mortgage Broker

MUST NOT MISLEAD OR MISREPRESENT

Part 3

Appraiser Roles

The "**DEFAULT**" Expectation of an appraiser is that he is "acting as an appraiser." The ***Public*** has an . . .

. . . Expectation of Impartiality

. . . Expectation of Objectivity

. . . Expectation of lack of Bias

Part 3

Appraiser Roles

To act ***other than*** an appraiser, a licensed or certified appraiser MUST . . .

. . . **DESTROY THE EXPECTATION**

of "acting as an appraiser"

Part 3

Appraiser Roles

An Appraiser must act as an Impartial Expert when performing

- Appraisals
- Appraisal Reviews
- Appraisal Consulting Assignments

USPAP Standards 1-10 Apply

Part 3

Appraiser Roles

An Appraiser must act Competently in an Unbiased and Objective Manner when performing appraisal related services such as

- Teaching appraisal courses
- Writing appraisal related publications
- Other roles where the "**public**" EXPECTS the appraiser to "act as an appraiser

USPAP Ethics and Competency Rules Apply

Part 3

Appraiser Roles - **ADVOCACY**

An Appraiser may **NOT** act as an advocate

While acting as an appraiser . . .

except to advocate his **own** opinions in an appraisal report

USPAP Applies

Part 3

Appraiser Roles - **ADVOCACY**

To act as an ***advocate***, an appraiser **MUST** . . .

DESTROY

the **EXPECTATION**

of acting as an appraiser – (unbiased, independent, impartial)

Part 3

Appraiser Roles - **ADVOCACY**

In a Litigation Appraisal Assignment, the appraiser can function as ***EITHER*** an Appraiser or an Advocate . . .

BUT NOT BOTH!

Part 3

Appraiser Roles - **ADVOCACY**

To Avoid Compromising the Appraiser . . .

Hire Two Appraisers

- ***Testifying*** Appraiser – Impartial – Subject to discovery

- ***Consulting*** Appraiser – Advocating Counsel's Case – Not subject to discovery

Part 3

Appraiser Roles - **ADVOCACY**

Appraiser as "Team Member"

- ***Testifying*** Appraiser –
  Should Not Be Perceived as a "Team Member"

- ***Consulting*** Appraiser –
  Can be a "Team Member" with attorney

Part 3

Appraiser Roles

USPAP Standard 3 – ***Appraisal Review***

An opinion regarding the quality of another appraiser's appraisal, appraisal review, or appraisal consulting report.

Oral Testimony about another appraisal is an appraisal review

Must comply with USPAP

Part 3

Appraiser Roles – Pop Quiz

QUESTION IN ADVISORY OPINION 21:

Marie Vaughn has a diverse appraisal practice with a specialization in litigation services. She commonly aids attorneys in developing cross-examination strategies for expert witness testimony from appraisers.

How does USPAP apply to Marie's "litigation services?"

ANSWER: She must **DESTROY** the **EXPECTATION** of acting as an appraiser before she can provide this service to counsel . . .

AND . . .

She then **CANNOT** testify in the same case as an Appraiser.

Part 4

Appraisal Resources for Lawyers

- Lawyer's Recommended Appraisal Library
- Article – "The USPAP Trap"
- Title 18, Chapter 01 – 24.18.01 – Rules of the Real Estate Appraiser Board
- Valuation Process Chart
- Levels of Appraisal Practice or non-Practice Chart
- Article – "We Don't Win or Lose"
- Article – "What Lawyers Need to Know About Real Estate Appraisal Reports"

For More Information

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